

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7627 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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THAKORBHAI DEEPABHAI VASAVA

Versus

STATE OF GUJARAT

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Appearance:

MS SUMAN PAHWA for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar passed an order on 23rd March 1999 in exercise of powers u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act,

1985 [hereinafter referred to as 'the PASA Act' for short], detaining the petitioner.

2. The detaining authority has stated in the grounds of detention that five offences are registered against the detainee under Bombay Prohibition Act and has also taken into consideration statements of two anonymous witnesses. The detaining authority also considered the other proceedings initiated against the detainee and came to a conclusion that less drastic remedy is not possible to be resorted to as the petitioner is required to be immediately prevented from pursuing his anti social activities which are detrimental to public order. The detainee was detained factually on 5th March 1999.

3. The petitioner - detainee challenges the order of detention mainly on the ground of delay in passing the order. It has been contended by Ms. Pahwa that apparently the statements of anonymous witnesses were recorded on 30th October 1998. The same were verified by the Dy.S.P., Ankleshwar on 10th November 1998 and by the detaining authority on 17th November 1998. Thereafter, no action is taken and the order came to be passed on 23rd March 1999 i.e. nearly after four months. Ms. Pahwa, therefore, submitted that the drastic remedy of detention under the PASA taken under the garb of immediate need for preventing the petitioner from pursuing his illegal activities, is not genuine. The delay may be considered as fatal and the petition may be allowed.

4. Mr.M.A.Bukhari, learned AGP appearing for the respondents conceded to the factual aspects of the dates of recording the statements, verification of the statements and passing of the order. He however submitted that delay, at times occurs in Government machinery due to heavy work load and therefore, the delay may not be taken seriously.

5. The picture that emerges is that the entire papers were perused and verified by the detaining authority on 17th November 1998. The detaining authority has, in the grounds of detention, stated that there was need to immediately prevent the petitioner from pursuing his illegal and anti social activities and ordinary machinery may not prove to be equally efficacious and therefore, detention under the PASA is necessary. This reasoning for detaining the petitioner under PASA and satisfaction therefor cannot be said to be genuine, as the detaining authority itself has remained inactive for a period of nearly four months. If there was a genuine

need for immediate action and detention under PASA, the detaining authority would have and ought to have moved fast. The satisfaction, therefore, for the need for exercise of powers under PASA for immediately detaining the petitioner, cannot be said to be genuine. Mr. Bukhari's argument that, because of heavy work load, the delay has occurred, also cannot be accepted. The delay is so gross and responsible officer like the detaining authority are expected to fix up the priority in accordance with urgency and that being so, the order would stand vitiated on the ground of delay alone.

6. The petition, therefore, deserves to be allowed.

7. The petition is allowed. The impugned order of detention is quashed and set aside. The detenue Thakorbhai Deepabhai Vasava, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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